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March 20, 2003

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Ms. Marlene H. Dortch  
Secretary  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street. S.W.  
Washington, D.C. 20554

Re: Review of Regulatory Requirements for Incumbent LEC Broadband  
Telecommunications Services and Wireline/Internet Access  
Services, CC Docket Nos. 01-337 and 02-33, 95-20, 98-10.

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Dear Ms. Dortch:

On March 19, 2003, the undersigned and Dr. Lee Selwyn of Economics and Technology, Inc., on behalf of The Ad Hoc Telecommunications Users Committee ("Ad Hoc"), met with Jeffrey Carlisle, Senior Deputy Chief Wireline Competition Bureau; Carol Matthey, Deputy Chief Wireline Competition Bureau; Brent Olson, Deputy Division Chief Competition Policy Division; Cathy Carpino and Terri Natoli, to discuss the proceedings referenced above. The participants discussed the issues raised by Ad Hoc in its written pleadings filed in the referenced dockets. In addition, we discussed the materials attached hereto.

The first attachment summarizes the substance of Ad Hoc's previously-filed pleadings. The meeting participants discussed Tables 3 and 7 in the second attachment which is a declaration filed January 23, 2003, in the public record of the Commission's proceeding in RM No. 10593. The participants discussed the special access profit margin indicated in the third attachment which is a "Revenue Profile" produced by Verizon. Finally, the participants discussed the difference in relative size of the MSAs with Phase I and Phase II pricing flexibility under the Commission's rules. The MSAs are listed in the fourth attachment.

✓

Pursuant to Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206(b), copies of this letter and attachments have been filed with the Office of the Secretary.

Sincerely,



---

Colleen Boothby

Counsel for  
Ad Hoc Telecommunications Users  
Committee

Attachments

cc: Jeffrey Carlisle  
Carol Matthey  
Brent Olson  
Cathy Carpino  
Terri Natoli

- Competition in broadband business markets has yet to develop
  - Member survey confirms little or no competition
  - Cable is not an option for business services
  - The BOCs can and do raise their prices when they get regulatory flexibility
  - BOCs are not competing out of region
- There is no evidence of competition in the record for either docket
  - No party to these proceedings has proffered evidence of competition in this market
  - No party has rebutted Ad Hoc's showing that Competition does not exist
- End users need the protection of the Computer II/III rules
  - End users want to control their choice of CPE and ISPs
  - Business end users need the technological innovation and downward pricing pressure of open markets for CPE and information services
- The Commission must also
  - Enforce the non-discrimination, pricing, and tariffing requirements in the Act
  - Revive incentive regulation of ILEC prices for broadband business services
    - Initialize ILEC special access rates at the price cap-regulated levels in place before MSA pricing
    - Initiate and complete an X factor specification before the CALLS plan re-targets the X to GDP-PI in July 2004
  - Continue the ILECs' contract tariff authority so that ILECs and customers can negotiate to respond to competition if it emerges

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of

AT&T Corp.

Petition for Rulemaking to Reform  
Regulation of Incumbent Local Exchange  
Carrier Rates for Interstate Special  
Access Services

**RM No. 10593**

Reply Declaration

of

**LEE L. SELWYN**

on behalf of

AT&T Corp.

January 23, 2003

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- 1 **Statement of Qualifications**
- 2 **Installation and Repair Intervals (Interexchange Access) - Annual**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of

AT&T Corp.

Petition for Rulemaking to Reform  
Regulation of Incumbent Local  
Exchange Carrier Rates for Interstate  
Special Access Services

**RM No. 10593**

**REPLY DECLARATION OF LEE L. SELWYN**

**Introduction**

Lee L. Selwyn, of lawful age, declares and says as follows:

1. My name is Lee L. Selwyn; I am President of Economics and Technology, Inc. ("ETI"), Two Center Plaza, Suite 400, Boston, Massachusetts 02108. ETI is a research and consulting firm specializing in telecommunications and public utility regulation and public policy. I have participated in proceedings before the Federal Communications Commission ("FCC" or "Commission") dating back to 1967 and have appeared as an expert witness in hundreds of state proceedings before more than forty state public utility commissions. My Statement of Qualifications is annexed hereto as Attachment I and is made a part hereof.

2. I have been asked by AT&T to review and analyze the various factual claims advanced by the RBOCs in support of their contention that reinstatement of price regulation for special



1 access services is not required. Specifically, the RBOCs have challenged evidence presented by  
2 AT&T in support of its *Petition* that special access prices in **MSAs** subject to Phase II pricing  
3 flexibility have increased relative to special access prices that remain subject to price cap regu-  
4 lation, that rates of return on special access services have risen to patently excessive levels, and  
5 that competition for special access services in areas subject to Phase II pricing flexibility is not  
6 sufficient to constrain RBOC exercise of market power with respect to these services. **As I** show  
7 in this declaration, these RBOC contentions are without merit and in no sense refute or otherwise  
8 undermine the factual basis for AT&T's *Petition*.

9  
10 **Summary**  
11

12 3. **As** revealed in the documentation supporting AT&T's initial petition, ample evidence  
13 exists that prices for special access services have increased in areas in which the RBOCs have  
14 been granted full Phase II pricing flexibility. In their comments regarding AT&T's evidence, the  
15 RBOCs launched a multi-faceted attack that surprisingly left untouched the most compelling  
16 piece of AT&T's evidence: its comparison of the prices for special access services tariffed in  
17 areas in which pricing flexibility has been granted to the prices that remain in effect in price caps  
18 regulated areas. In the material below, I provide further evidence of special access price  
19 increases through examination of the RBOCs' tariffs, and demonstrate that Verizon's defense of  
20 its price increases does not explain the increase, that have actually occurred. I also provide  
21 evidence to refute the RBOCs' claim that CLECs have deployed or are in a financial position to  
22 deploy their own facilities to serve a substantial portion of the buildings occupied by special  
23 access customers. I establish, to the contrary, that competitively provided special access faci-  
24 lities are only available at an extremely small number of commercial buildings, compelling IXCs  
25 to acquire the vast majority of these services from the ILEC. Even in the most competitive MSA  
26 in the US, New York, where AT&T provides service at 3,613 different buildings, no AT&T or  
27 other CLEC facilities are available at **89.9%** of building locations. Finally, I demonstrate that

1 the RBOCs' have produced very **weak** evidence in their **attempts** to discredit AT&T's analysis of  
2 special access **rates** of return based on data reported to the Commission under **ARMIS** and show  
3 that, in fact, **ARMIS** data provides a *conservative* estimate of RBOC rates of return on Special  
4 **Access** Services.  
5

1 1. PRICING OF SPECIAL ACCESS SERVICES IN MSAs SUBJECT TO PHASE II  
2 PRICING FLEXIBILITY  
3

4 **RROC** comments deflect attention away from compelling price comparison data **included**  
5 **in AT&T's Petition.**  
6

7 4. The basic premise upon which the FCC relied in establishing guidelines for Phase II  
8 pricing flexibility in CC Docket 96-262 was that if the required level of collocation of CLECs in  
9 ILEC central offices had been established, there would at that time be a sufficient level of com-  
10 petition in those markets to constrain ILEC market power and thereby obviate the need for con-  
11 tinued price regulation of special access services.<sup>1</sup> On that basis, one would expect that where  
12 the conditions for Phase II pricing flexibility had been satisfied and that pricing flexibility had  
13 been implemented, special access prices in those areas would have actually decreased by a  
14 greater relative amount than in those (putatively less competitive) areas still subject to price cap  
15 regulation. Indeed, in their Reply Declaration, AT&T Declarants Ordovery and Willig note  
16 specifically that the purported "need" to drop prices in response to competition was specifically  
17 advanced by the RBOCs as a basis for the pricing flexibility that they had sought.<sup>2</sup> That aside,  
18 with its *Petition* AT&T has provided detailed evidence demonstrating that not only have special  
19 access prices not decreased by a greater relative amount in MSAs subject to Phase II pricing  
20 flexibility than in areas that remain subject to price regulation, but that in fact under "pricing  
21 flexibility" the RBOCs have actually **increased** special access rates where permitted to do so.

22  
23 5. While the RBOCs and their experts have gone to great lengths in their attempts to  
24 discredit the competition and rate of return (ROR) analyses proffered in support of AT&T's  
25 *Petition*, they have said little in regard to the *prima facie* evidence of increasing prices -- the

---

1. *Pricing Flexibility Order*, 14 FCC Rcd. 14221 (1999)

2. Ordovery/Willig Reply Decl., at para. 33.

1 comparison of price levels for price cap regulated services versus those for services where Phase  
2 II pricing flexibility has been granted.'

3  
4 6. Verizon's is the only Comment that attempts to address AT&T's evidence that BOC  
5 special access prices have *increased* in those MSAs in which Phase II pricing flexibility has been  
6 allowed. Other RBOC comments either ignore AT&T's pricing data entirely, or mention it only  
7 in passing.<sup>4</sup> In Footnote 58 of its filing, Verizon claims that the changes in its special access  
8 prices represent a mixture of increases and decreases. While it is within the realm of possibility  
9 that prices for some elements of Verizon special access service in Verizon's Phase II areas did  
10 decline, our review of the tariffs failed to reveal any such instance. Apparently, the "mixture" of  
11 increases and decreases to which Verizon was referring in its footnote 58 consists of *increases* in  
12 those areas in which pricing flexibility has been granted and *decreases* in the remaining areas  
13 where special access rates remain subject to price cap regulation.

14  
15 7. Specifically, Verizon claims that its price changes are part of an attempt to "expand the  
16 differential between zones 1, 2 and 3."<sup>5</sup> Analysis of Verizon's pricing data, however, proves  
17 this defense of its price changes to be untrue. As the table below demonstrates, Verizon has  
18 applied straight, across-the-board increases to the pricing flexibility price ranges for all three  
19 zones, such that the relative "differential between zones 1, 2 and 3" has actually remained  
20 *unchanged* although the rate levels have risen. The sample data in the table below are based  
21 upon the pricing for DS-3 single channels at an "initial" premises at month-to-month rates.

---

3. See Declaration of Joseph M. Stith, AT&T Petition

4. See, e.g., the mention of the pricing evidence in Bell South's comments only in reference to a criticism of AT&T's ARMIS based analysis. BellSouth Comments at footnote 7.

5. Verizon Comments, at fn. 58.

- 1 Although limited to a single category of channel terminal prices, the results are consistent with
- 2 the changes made to Verizon's other special access rate elements as well.

Table 1					
Contrary to Its Claims, the Changes that Verizon has made to its Special Access Tariffs Do Nothing to "Increase the Differential" between Zone prices					
Company Name	State	Zone/Band	Standard Pricing "Initial Premises" DS3 Chan Term	phase II Pricing Flexibility "Initial Premises" DS3 Chan Term	% by which phase II prices have been increased over Price Cap Level
Verizon FCC Tariff No. 1	DC, DE, MD, NJ, PA, VA, WV	Zone 1/Band 4 Zone 2/Band 5 Zone 3/Band 6 Differential between Zone 1/ Band 4 and Zone 3/Band 6	\$2,667.50 \$2,800.88 \$2,934.25 10%	\$3,025.00 \$3,176.25 \$3,327.50 10%	13% 13% 13%
Verizon FCC Tariff No. 11	MA	Zone 1/Band 4 Zone 2/Band 5 Zone 3/Band 6 Differential between Zone 1/ Band 4 and Zone 3/Band 6	\$2,310.03 \$2,425.50 \$2,541.00 10%	\$2,541.00 \$2,668.05 \$2,795.10 10%	10% 10% 10%
Verizon FCC Tariff No. 11	NY, CT	Zone 1/Band 4 Zone 2/Band 5 Zone 3/Band 6 Differential between Zone 1/ Band 4 and Zone 3/Band 6	\$2,310.00 \$2,425.50 \$2,541.00 10%	\$2,541.00 \$2,668.05 \$2,795.10 10%	10% 10% 10%
Verizon FCC Tariff No. 11	ME, NH, RI, VT	Zone 1/Band 4 Zone 2/Band 5 Zone 3/Band 6 Differential between Zone 1/ Band 4 and Zone 3/Band 6	\$2,541.00 \$2,541.00 \$2,541.00 0%	\$2,795.10 \$2,795.10 \$2,795.10 0%	10% 10% 10%
Note *: This is the monthly rate for a primary location with a single DS3 CT.					
Source: The Verizon Telephone Companies Access Service Tariff F.C.C. No. 11, section 31.7.9 (A) (1) C effective April 28, 2001, Section 30.7.9(A)(1)C, effective November 8, 2002, The Verizon Telephone Companies access Service tariff F.C.C. No. 1, section 7.5.9(B)(1)(d), effective January 5, 2002.					

- 3 8. Verizon goes on to suggest that another reason for its price changes is an attempt to bring
- 4 the rates between Verizon North (the former NYNEX states) and Verizon South (the former Bell

- 1 Atlantic states) more in line." In point of fact, however, as the data on the table below demon-  
 2 strates, the gap between the prices charged by Verizon South and Verizon North is greater in  
 3 areas in which pricing flexibility has been granted than it is elsewhere.

Table 2				
Contrary to Its Claims, the Changes that Verizon has made to its Special Access Tariffs Do Nothing to Bring the Prices in Verizon North and Verizon South Territories "More in Line"				
Company Name	State	Zone/Band	Standard Pricing "Initial Premises" DS3 Chan Term *	Phase II Pricing Flexibility "Initial Premises" DS3 Chan Term *
Verizon FCC Tariff No. 1	DC, DE, MD, NJ, PA, VA, WV	Zone 1/Band 4	\$2,667.50	\$3,025.00
		Zone 2/Band 5	\$2,800.88	\$3,176.25
		Zone 3/Band 6	\$2,934.25	\$3,327.50
Verizon FCC Tariff No. 11	MA, NY, CT	Zone 1/Band 4	\$2,310.00	\$2,541.00
		Zone 2/Band 5	\$2,425.50	\$2,668.05
		Zone 3/Band 6	\$2,541.00	\$2,795.10
Verizon FCC Tariff No. 11	ME, NH, RI, VT	Zone 1/Band 4	\$2,541.00	\$2,795.10
		Zone 2/Band 5	\$2,541.00	\$2,795.10
		Zone 3/Band 6	\$2,541.00	\$2,795.10
Amount by which Verizon South rate exceeds Verizon North (MA, NY, CT)				
		All Zones	15%	19%
Amount by which Verizon South rate exceeds Verizon North (ME, NH, RI, VT)				
		Zone 1/Band 4	10%	14%
		Zone 2/Band 5	10%	14%
		Zone 3/Band 6	15%	19%
Note * This is the monthly rate for a primary location with a single DS3 CT. Source The Verizon Telephone Companies Access Service Tariff F.C.C. No. 11, section 31.7.9 (A) (1) C effective April 28, 2001, Section 30.7.9(A)(1)C, effective November 8, 2002, The Verizon Telephone Companies Access Service Tariff F.C.C. No. 1, Section 7.5.9(B)(1)(d), effective January 5, 2002.				

6. Verizon Comments, at fn. 58

1 9. Particularly noteworthy in Verizon's case are the phenomenal increases in the price for  
2 Verizon South DS3 channel terminations at "secondary premises,"<sup>7</sup> an entire class of customer  
3 locations (not limited to specific geographic areas within an MSA) that is less likely to have  
4 competitive options available to it. While the variance between prices for a "primary premises"  
5 DS-3 channel termination in the Verizon South FCC Tariff No. 1 offered at standard price caps  
6 regulated prices and that available in Phase II MSAs is 13% (between \$350 and \$400 more in  
7 Phase II areas depending upon density zone), the variance for "secondary premises" channel  
8 terminations is 71% (ranging between \$1,210 and \$1,331 more in Phase II areas). Verizon's gap  
9 in the price for a DS-3 channel termination located in density Zone I in the most competitive  
10 MSAs in Verizon South territory (encompassing the downtown areas of places like Pittsburgh,  
11 PA and Richmond, VA) from the level of \$1,700.96 found in the price caps regulated areas to  
12 \$2,911.37 — a gap of more than 70% — does not begin to be justified by any of the explanations  
13 being advanced in Verizon's comments.

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7. While the definition of a secondary premises in Verizon's tariff (at Verizon FCC No. 1, Section 7.4.1.A.1) is rather unhelpful, a full reading of the rate regulations reveals rather clearly that the "primary premises" is an LXC POP, and the "secondary premises" is a end user customer premises.

Table 3					
Company Name	State	Zone/Band	Standard Pricing "Secondary Premises" DS3*	Phase II Pricing Flexibility "secondary Premises" DS3*	% by which Phase II prices have been increased over Price Cap Level
Verizon ICC Tariff No. 1	DC, DE, MD, NJ PA, VA, WV	Zone 1/Band 4	\$1,700.96	\$2,911.37	71%
		Zone 2/Band 5	\$1,786.01	\$3,056.94	71%
		Zone 3/Band 6	\$1,871.06	\$3,202.51	71%
		Differential between Zone 1/ Band 4 and Zone 3/ Band 6	10%	10%	
Verizon ICC Tariff No. 11	MA, NY, CT	Zone 1/Band 4	\$1,700.96	\$1,871.06	10%
		Zone 2/Band 5	\$1,786.01	\$1,964.61	10%
		Zone 3/Band 6	\$1,871.06	\$2,058.17	10%
		Differential between Zone 1/ Band 4 and Zone 3/ Band 6	10%	10%	
Note *: This is the monthly rate for a secondary location DS3 CT. Source: The Verizon Telephone Companies Access Service Tariff F.C.C.No. 11, section 31.7.9 (A) (1) C effective April 28, 2001, Section 30.7.9(A)(1)C, effective November 8, 2002, The Verizon Telephone Companies Access Service Tariff F.C.C. No. 1, Section 7.5.9(B)(1)(d), effective January 5, 2002.					

10. Verizon has increased its prices for channel terminations in Phase II pricing areas virtually across-the-board, while keeping the prices for the transport component constant. None of the justifications advanced by Verizon at footnote 58 of its Comments — viz.: increasing the differentials among Zones 1, 2 and 3, rationalization of Verizon North and Verizon South rates, and the claim that the channel termination rate increases applied only to its month-to-month rates and not to its Contract Tariff rates — adequately account for this change. As shown in Table 4 below, using month-to-month prices for a single DS-3 as an example once again, the portion of the total price for a two-ended access circuit with 10 miles of associated interoffice transport increased by 36%, while the transport component itself remained unchanged. For DS-I circuits, Verizon has raised channel terminations in some Phase II areas by up to 24%, while increasing



- 1 transport **by** only 4%.<sup>8</sup> The price of a full DS-I circuit with 10 miles of transport has increased  
2 almost 11%, with channel termination accounting for over 46% of the circuit price.'

Table 4			
Verizon has limited most of the increases in its Phase II Tariffs to Channel Terminations, leaving the prices for Transport Price Caps levels			
	Standard Pricing	Phase II Pricing	% by Which Phase II Exceeds Standard Pricing
<i>VZ-South- Zone 1/Band 4</i>			
Initial Premises CT	\$2,667.50	\$3,025.00	13%
Secondary Premises CT	\$1,700.96	\$2,911.37	71%
Transport Fixed Charge	\$825.00	\$825.00	0%
Transport Mileage: 10 miles	\$1,550.30	\$1,550.30	0%
Total Circuit Price	\$6,743.76	\$8,311.67	23%
CT Portion of Circuit Price	\$4,368.46	\$5,936.37	36%
<i>VZ-North - Zone 3/Band 6</i>			
Initial Premises CT	\$2,541.00	\$2,795.10	10%
Secondary Premises CT	\$1,871.06	\$2,058.17	10%
Transport Fixed Charge	\$825.00	\$825.00	0%
Transport Mileage: 10 miles	\$1,550.30	\$1,550.30	0%
Total Circuit Price	\$6,787.36	\$7,228.57	7%
CT Portion of Circuit Price	\$4,412.06	\$4,853.27	10%
Source: The Verizon Telephone Companies Access Service Tariff F.C.C. No. 11, section 31.7.9(A) (1) C effective April 28, 2001, Section 30.7.9(A)(1)C, effective November 8, 2002, The Verizon Telephone Companies Access Service Tariff F.C.C. No. 1, Section 7.5.9(B)(1)(d), effective January 5, 2002.			

8. The Verizon Telephone Companies Access Service Tariff, **F.C.C.** No. 11, sections 31.7.9 (A) (1) (a) effective July 2, 2002 and 30.7.9 (A) (1) (a), effective January 5, 2002; The Verizon Telephone Companies Access Service Tariff, F.C.C. No. 11, sections 31.7.9 (B) (2) and 30.7.9 (B) (2), effective January 5, 2002.

9. DS-I Channel Termination in Massachusetts Zone 2/Band 5 increased from a standard rate of \$228.25 to \$283.55. Transport charges increased from \$53.00 to \$55.00, with a per mile transport charge of \$26.30 standard rate, and \$27.37 Phase II rate.

11. Verizon also indicates that an analysis of prices offered in areas in which pricing flexibility has been granted that is based upon the non-contract based prices is flawed because Verizon has filed Contract Tariffs and those Contract Tariff based price levels are the pertinent prices.<sup>10</sup> While I dispute Verizon's contention that any pricing analysis must be based upon Contract Tariff based prices, I nonetheless evaluated whether the existence of the Contract Tariffs affected the conclusions yielded by AT&T's initial analysis. The answer is that it does not.

12. As of the date that this declaration was being prepared, more than eighteen months after it had been granted pricing flexibility, Verizon had filed only two Contract Tariffs. And although pricing flexibility has been granted in most of the largest of Verizon's markets, the magnitude of special access revenues covered by those two Contract Tariffs represent less than 10% of Verizon's Special Access revenues as reported for calendar year 2001, suggesting that they likely represent an even smaller portion of Special Access revenues today."

13. Moreover, the level of discount being offered through each of Verizon's Contract Tariffs (structured as a discount off of the Phase II general price levels) does not necessarily even compensate for the increases found in the pricing flexibility tariffs. In other words, even with the Contract Tariff discounts, the prices for many pricing flexibility services are still above the levels available for the same services in price cap regulated areas. As the table below illustrates, the application of "incentives" available through Verizon's Contract Tariff Option 1. CT Option 1 requires commitment to deliver \$301-million in special access billing during the first

---

10. Verizon Comments, at fn. 58.

11. Based upon the overall volume threshold and minimum traffic requirements found in the two Verizon Contract Tariffs, the aggregate commitment to service is in the range of approximately \$400-million per year for both contracts combined across all regions. See, Verizon FCC No. 1, Section 21, Verizon FCC No. 11, Section 32, and Verizon FCC No. 14, Section 21. Verizon's reported special access revenues per ARMIS for 2001 were in excess of \$4.7-billion.

1 year of the contract (escalating to \$386-million by the third year), and offers “incentives” for  
 2 delivery of Product Suite traffic as well. The relevant Product Suite in CT 1 is DS3 Service, and  
 3 for year one, the customer must deliver a minimum of \$132-million in OS3 billing, with the dis-  
 4 counts maxing out at \$137-million in billing. Using the examples in the tariff, the total incen-  
 5 tive discount available for non-DS3 services (based upon annual billing of \$340-million) is  
 6 2.7%. The incentive discount for the Product Suite, assuming delivery of the \$135.5-million in  
 7 DS3 billing used in the tariff example, works out to 5.4%. Combined, the “Product Suite” and  
 8 Annual incentives available for DS3 services is equal to 8.1%. Compare this to the 10% and  
 9 13% increases in the prices for DS1 month to month channel terminals, or the 71% increase in  
 10 the secondary channel termination rate in the Verizon South Phase II MSAs, and the discount  
 11 offered through the Contract Tariff is less than overwhelming.

Table 5				
Derivation of Credit Percentages from Contract Tariff Option 1 in Verizon Access Tariffs FCC 1, FCC 11 and FCC 14				
<i>Annual Incentive Component</i>				
			Year 1 credits	
(a)	Total Revenues in Tariff example	\$	340,000,000	
(b)	Fixed Incentive Year 1	\$	3,800,000	\$ 3,800,000
(c)	Tier 1 Discount (applies on \$301 to \$325 million)		16%	\$ 2,400,000
(d)	Tier 2 Discount (applies on \$s above \$325-million)		20%	\$ 3,000,000
(e)	Total Annual Incentive Credit			\$ 9,200,000
(f)	Annual Incentive Credit as % of Billing		2.7%	
<i>Product Suite Incentive</i>				
	Total Revenues in Tariff example	\$	135,500,000	
	Level 6 (product suite billing >\$137-mil)		100% of annual incentive	
	Level 5 (product suite billing between \$136- and 137-mil)		90% of annual incentive	
	Level 4 (product suite billing between \$135- and 136-mil)		80% of annual incentive	\$ 7,360,000
	Total Product Suite Incentive Credit			\$ 7,360,000
	Product Suite Incentive Credit as % of Product Suite Billing		5.4%	
	Total Incentive % on DS3 Product Suite		8.1%	
	Total Incentive % on other Special Access Products		2.7%	
Source: Verizon FCC # 1 Section 21, pages 21-12 - 21-14, Verizon FCC #11, Section 32, pages 32-11 - 32-13, and Verizon FCC # 14, Section 21 pages 21-11 - 21-13				

14. Despite their professed interest in engaging in Contract Tariffs as a specific response to the competition that they purport to confront, the other RBOCs also entered into only a handful of Contract Tariffs during 2002. Contract Tariffs in the SBC companies (Southwestern Bell, Pacific Bell, Ameritech and SNET combined) at first glance appear to be somewhat more prevalent. Across the entire territory, ten different Contract Tariffs have been filed, nine of which were filed in 2002. Of those nine 2002 Contract Tariffs, six are essentially term plans for multiplexed DS-0 to DS-1 interoffice transport, and offer no pricing concessions for anything else.<sup>12</sup> Similarly, BellSouth has only tariffed ten custom contracts, half of which were executed during 2002.<sup>13</sup> As of the date of this declaration, Qwest had not executed any Special Access Contract Tariffs.<sup>14</sup>

15. Many of the Contract Tariffs that have been filed are restricted to limited geographic areas. Thus, despite the existence of Contract Tariffs, there are MSAs where Phase II pricing flexibility has been granted but where no services are currently being provided or offered pursuant to a Contract Tariff. As an example, a review of the ten Contract Tariffs filed by BellSouth reveals that although full Phase II pricing flexibility has been granted in the Columbia, SC, Evansville, KY, Owensboro, KY and Lafayette, LA MSAs, not one of BellSouth's Contract Tariffs offers contract based pricing in those MSAs. One of the other contracts applies in only eight of BellSouth's thirty Phase II pricing flexibility MSAs, while another is limited to eleven, and a third to eighteen out of the full thirty.

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12. SWBT Tariff FCC No. 73 - Section 41, Ameritech Tariff FCC No. 2, Section 22 and Pacific Bell Tariff FCC No. 1, Section 33.

13. BellSouth Tariff FCC No. 1, Section 25.

14. Qwest Tariff FCC No. 1, Section 24.

Table 6	
BellSouth MSAs in which <b>Full</b> Service (Phase II) Relief has been granted that are <b>excluded</b> from BellSouth Contract Tariffs.	
1	Evansville, KY. Owensboro. KY. Lafayette, LA. Columbia, SC
2	Evansville, KY. Owensboro. KY. Lafayette. LA. Columbia, SC
3	Montgomery, AL. Jacksonville, FL. Pensacola. FL. West Palm Beach, FL. Savannah, GA. Evansville, KY. Louisville, KY. Owensboro. KY. Baton Rouge, LA. Lafayette. LA. Lake Charles, LA. Monroe, LA. Shreveport. LA. Biloxi. MS, Jackson, MS, Chattanooga. TN, Knoxville, TN, Nashville, TN, Columbia, SC
4	Evansville, KY. Owensboro, KY. Lafayette, LA. and Columbia, SC
5	Evansville, KY. Owensboro. KY. Lafayette. LA. and Columbia, SC
6	Evansville, KY. Owensboro, KY. Lafayette, LA. Lake Charles, LA. and Columbia.:
7	Evansville. KY. Owensboro. KY. Lafayette, LA. and Columbia, SC
8	Montgomery, AL. Daytona Beach, FL. Gainesville, FL. Jacksonville, FL. Melbourne. FL. Miami, FL. Orlando, FL. West Palm Beach, FL. Atlanta, GA. Savannah, GA. Evansville, KY. Louisville, KY. Owensboro, KY. Lafayette. LA. Charlotte, NC. Greensboro, NC. Raleigh-Durham, NC. Wilmington. NC, Chattanooga, TN, Knoxville, TN. Memphis, TN. Columbia, SC
9	Pensacola. FL. Savannah, GA. Evansville, KY. Owensboro. KY. Baton Rouge, LA. Lafayette, LA. Lake Charles, LA. Monroe, LA. Shreveport, LA. Jackson, MS, Columbia, SC
10	Evansville, KY. Owensboro, KY. Lafayette, LA. Columbia, SC

1 2. FACILITIES-BASED COMPETITION IS STILL EXTREMELY LIMITED, EVEN IN  
PHASE II PRICING FLEXIBILITY MSAs.

4 Competitively provided special access facilities are only available at an extremely small  
5 number of commercial buildings, forcing **IXCs** to acquire the vast majority of these  
services from the **ILEC**.

8 16. Special access services consist of three principal elements — the loop facility  
9 connecting the customer's premises with the serving wire center ("Channel Termination"),  
10 Interoffice Transport links interconnecting two or more wire centers, and entrance facilities.  
11 While the Commission's Phase II Pricing Flexibility requirements are driven primarily by the  
12 presence of CLEC/CAP collocation arrangements in ILEC central offices," in practice such  
13 collocation may possibly affect the ability of a CLEC/CAP to compete with the ILEC for  
14 Interoffice Transport, but *not* its ability to provide the special access link to the customer's  
15 premises. Indeed, RBOCs fail to provide any evidence of competitive facilities being used to  
16 displace either interoffice transport in the RBOC network or channel terminations to end user  
17 premises. Accordingly, even if the presence of multiple collocation arrangements were by itself  
18 sufficient to establish the presence of effective competition for *interoffice transport* — which in  
19 many cases it is not — the presence of such collocation does not facilitate or support competition  
20 with respect to "last mile" channel terminations to individual customer premises, the market for  
21 which with few exceptions remains the near-exclusive domain of the incumbent LECs.

22  
23 17. In order to compete without the use of any ILEC special access service, a CLEC/CAP  
24 must either deploy its own facilities between the customer's premises and the CLEC's central  
25 office, or acquire them from another CLEC/CAP, if available. Absent that, the fact that the  
26 CLEC/CAP may have a collocation presence in the ILEC wire center serving the customer will  
27 not enable it to bypass ILEC special access channel termination service. If the CLEC wants to

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18. *Pricing Flexibility Order*, 14 FCC Rcd 14221, 14261-14262

1 offer competitive transport facilities to customers in buildings that are not served by its own *or*  
2 by another CLEC's subscriber facilities, the *only* means by which it can interconnect its compe-  
3 titive transport facilities with its customer is via ILEC-provided special access.

4  
5 18. ILECs own subscriber access line facilities connecting some 3- to 4-million commercial  
6 buildings nationwide.<sup>16</sup> AT&T currently provides service at approximately 186,000 commercial  
7 buildings.<sup>17</sup> Of these, AT&T *owns* facilities to only about 6,700 buildings, and obtains facilities  
8 *from other CLECs* at approximately 3,300 additional locations.<sup>18</sup> Thus, competitive alternatives  
9 to ILEC special access service are available at only about 10,000 locations, representing roughly  
10 5.7% of the approximately 186,000 commercial buildings at which AT&T currently provides  
11 service, and at less than 0.4% of the 3- to 4-million commercial buildings nationwide.

12  
13 19. The availability of competitive alternatives to ILEC special access in MSAs subject to  
14 Phase II pricing flexibility is not appreciably greater. AT&T currently serves 38,477 buildings

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16. This does not necessarily mean that the potential market for special access-like facilities consists of all commercial buildings. On the other hand, it clearly consists of more buildings than merely those that are currently receiving service.

17. LNS Building Database Warehouse, <http://scot.als.att.com/scot/>, accessed January 22, 2003 and LNS Building Inventory, AT&T Proprietary Database, accessed January 10, 2003.

18. *Id*

1 in the Full Coverage Phase II ISAs,<sup>19</sup> and owns or has access to other CLEC-owned facilities in  
 2 only about 2,375 of these<sup>20</sup> (see Table below), about 6% overall.  
 3

Table 7				
Competitive Alternatives to ILEC Special Access are Minimally Available Even in MSAs with Phase II Pricing Flexibility				
Type of Pricing Flexibility	TOTAL AT&T - served buildings	AT&T	Other CLECs	ILECs
Full Coverage Under Phase II	38,477	1,661 4.32%	714 1.86%	36,102 93.83%
Limited Coverage Under Phase II	94,202	4176 4.43%	1,893 2.01%	88,133 93.56%
No pricing flexibility	53,456	890 1.66%	682 1.28%	51,884 97.06%
<b>TOTALS</b>	<b>186,135</b>	<b>6,727 3.61%</b>	<b>3,289 1.77%</b>	<b>176,119 94.62%</b>
Sources: See footnote 19.				

19. Southwestern Bell Telephone Company, Tariff FCC No. 73, Section 39.2(A) and (B), 1st Revised Page 39-3, Effective: June 18, 2002; Qwest Corporation, Tariff FCC No. 1, Section 23, Original Page 23-0 - Original Page 23-28, Effective: June 15, 2002; The Verizon Telephone Companies, Tariff FCC No. 1, Section 14.7, Original Page 14-44 - Original Page 14-61, Effective: July 3, 2001; The Verizon Telephone Companies, Tariff FCC No. 11, Section 15.3, Original Page 15-19 - Original Page 15-34, Effective: July 3, 2001; Verizon Telephone Companies, Tariff FCC No. 14, Section 19.1, Original Page 19-1 - 3rd Revised Page 19-37, Effective: May 2, 2001 through June 1, 2002; The Southern New England Telephone Company, Tariff FCC NO. 39, Section 24.2(A) and (B), Original Page 24-2, Effective: June 18, 2002; Ameritech Operating Companies, Tariff FCC No. 2, Section 21.2 (A) and (B), 1st Revised Page 689, Effective June 18, 2002; Pacific Bell Telephone Company, Tariff FCC No. 1, Section 31.2(A) and (B), 3rd Revised Page 31-3, Effective: July 2, 2002.

20. *Id.*



1        20. Even in MSAs with the largest CLEC presence, CLECs must rely upon ILEC-provided  
 2        special access services for the majority of their customer connections. Consider, for example,  
 3        the following statistics for the New York, Boston, Chicago and Los Angeles areas:

Table 8			
Competitive Alternatives to ILEC Special Access are Minimally Available Even In Areas with the Largest CLEC Presence			
MSA	AT&T Share	Other CLEC Share	ILEC Special Share
New York	12.6%	1.5%	85.9%
Boston	11.8%	1.7%	86.5%
Chicago	4.6%	1.4%	94.0%
Los Angeles	3.5%	1.1%	95.4%

4        Even in the most competitive area in the US, New York, no AT&T or other CLEC facilities are  
 5        available at 85.9% of those locations. A similar pattern is evident in each of the other three large  
 6        markets. Moreover, it **would** be incorrect to interpret these aggregate MSA-wide figures as  
 7        suggesting that the distribution of AT&T- and CLEC-owned facilities is anything close to  
 8        homogeneous within each of these **MSAs**. The principal location of AT&T- or CLEC-owned  
 9        facilities is generally limited to the central business district and to a few other isolated locations.  
 10       It is also noteworthy that there are large areas in which there are **no** AT&T-connected customer  
 11       locations at all; in these locations, the ILEC remains the sole support of local telecommunica-  
 12       tions services. The extremely limited availability and non-homogeneous distribution of non-  
 13       ILEC facilities, even in MSAs with the greatest competitive presence, underscores the conclu-  
 14       sion that the MSA is simply too large an area within which to assess the ability and opportunity  
 15       for CLECs to compete for special access services. **And** except in those specific locations where  
 16       CLEC-provided special access facilities are in place, the ILEC maintains its unchallenged  
 17       monopoly and market power.

21. Both BellSouth and Verizon have attempted to misdirect the Commission away from this indisputable reality by introducing theoretical “studies” and other evidence that purports to show a substantially greater amount of facilities-based CLEC activity than is actually present. These KBOC “studies” and their portrayals of an intensely competitive facilities-based market are so fatally flawed that they must be dismissed as entirely meritless.

**BellSouth’s Eastern Management Group “study” rests entirely upon unsupported and patently false assumptions and assertions of “fact”**

22. BellSouth has attempted to dismiss these empirical realities by offering an entirely theoretical “study” penned by the Eastern Management Group (“EMG”) that purports to “derive the likelihood that Special-Access type facilities will be available in BellSouth’s territory.”<sup>21</sup> The EMG paper appears to be premised upon the notion that “the likelihood of the presence of such [collocated CLEC] facilities in a wire center indicates the availability of alternatives to BellSouth Special Access.”<sup>22</sup> I disagree. What “indicates the availability of alternatives to BellSouth Special Access” is the *actual presence* of alternative facilities in a wire center, not some theoretical calculation of “likelihood” that is itself premised upon entirely unsupported assumptions that are simply wrong as a matter of fact.

23. Not surprisingly, of course, EMG’s calculation of theoretical “likelihood” is driven entirely by an *assumption* of actual presence of CLEC-owned facilities in each wire center. EMG contends that, on average, *each collocated CLEC individually owns special access type facilities connected to 30.9% of the buildings served by that wire center:*

The probability of an IXC being able to purchase special access from a collocated CLEC is simply (1 — probability that no collocated **CLEC** is willing to

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21. Comments of BellSouth, Exhibit 2 (“EMG Report”), at 7

22. *Id.*, at 7.